

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DEANGELO EARLY,

Defendant-Appellant.

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UNPUBLISHED

December 16, 2003

No. 243036

Wayne Circuit Court

LC No. 01-006340

Before: Cavanagh, P.J., and Jansen and O'Connell, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of assault with intent to commit murder, MCL 750.83, and possession of a firearm during the commission of a felony, MCL 750.227b. He was sentenced as a fourth habitual offender, MCL 769.12, to serve consecutive terms of imprisonment of two years for the felony-firearm conviction, to be followed by fifty to eighty years for the assault conviction. He appeals as of right. Because the trial court failed to determine if the complaining witness was competent to testify,<sup>1</sup> we reverse.

On the evening of December 28, 2000, outside a house in Detroit that apparently operated as an unauthorized tavern, the complaining witness was shot several times in the back and leg. The complainant immediately, and consistently thereafter, identified defendant as the shooter. The prosecutor relied exclusively on the complainant's account of the event for defendant's identification.

The complainant had a long history of mental illness, manifesting itself in schizophrenia, delusions, and hallucinations. During the preliminary examination, the witness justified breaking in neighborhood doors by explaining that he was the police and further testified that he worked as a Lieutenant for the FBI. The complainant denied drinking or smoking cigarettes, and stated, "Only thing I do is smoke crack." He admitted residing at a mental institution and denied that he was properly medicated at the time of preliminary examination or during the shooting. The

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<sup>1</sup> Under the facts of the present case, the trial court had a legal duty to determine if the complainant was competent to testify. MRE 601.

preliminary examination was punctuated by odd, disruptive behavior from the witness and members of his family.

The preliminary examination testimony regarding the actual shooting was also devoid of any indication that the witness could competently testify. The witness presented contradictory evidence, first indicating that he ran away from defendant, then indicating that he ran around defendant's car while defendant shot at him. He stated that he could not see anything because of the bright, blinding snowfall but also testified that the shooting occurred at night. According to the complainant, defendant had been shooting at him for a month before he shot him outside the after-hours bar. The witness lapsed so far into incoherent or extraordinarily fanciful testimony at the preliminary examination that the district court interrupted the proceedings until an expert could evaluate the witness's competence. The expert, complainant's psychiatrist, equivocated on the issue of complainant's competence, but the district court judge decided that the issue of competency was better left to the jury.

At trial, defense counsel repeatedly asked the trial court to assess the complainant's competence to testify, but the court repeatedly responded that competence was a matter for the jury. While the complainant attempted to explain that his earlier testimony was impaired by his lack of medication, he failed to fully explain his preliminary examination responses and repeated much of the questionable testimony. He also reiterated his denial that he was taking medication at the time of the shooting. It became apparent at trial that the complainant had provided completely different explanations for why defendant shot at him. To the police, he claimed that defendant wanted repayment that the complainant said he never owed. To his psychiatrist he stated that defendant tried to rape his eighteen-year-old daughter. At trial, the complainant admitted that he did not have an eighteen-year-old daughter, and could not otherwise explain the statement except to say that he was heavily medicated during the interview. The prosecutor used the same psychiatrist and interview to suggest to the jury that the complainant was mentally competent to testify, but the expert's ultimate opinion of the complainant's competence to testify truthfully about the events was never elicited.

Most striking was the complainant's recollection that he told defendant's sister, a friend of his, to ask defendant to stop shooting at him about a week before the shooting. The complainant provided this trial testimony in conjunction with his reiteration that defendant had been shooting at him for a month. The defense presented undisputed evidence at trial that defendant's sister died several years before the shooting.

The question of witness competence is within the trial court's discretion and is reviewed on appeal for an abuse of discretion. *People v Breck*, 230 Mich App 450, 457; 584 NW2d 602 (1998). But a court's determination of whether it or the jury should determine competency is a preliminary question of law we review de novo. *People v Lukity*, 460 Mich 484, 488; 596 NW2d 607 (1999).

The trial court's deference to the jury on the question of witness competence was legal error. The applicable rule, MRE 601, provides, "Unless the court finds after questioning a person that the person does not have sufficient physical or mental capacity or sense of obligation to testify truthfully and understandably, every person is competent to be a witness except as otherwise provided in these rules." So although competence is generally presumed, the court, not the jury, must initially investigate and decide the matter of competence. *Breck, supra* at 457.

In this case, the complainant's undisputed history of mental illness and drug abuse and his repeated testimonial delusions militated in favor of granting defense counsel's requests for a determination of competence. The court's repeated indications that the jury should decide the question was an error of law. This legal misconception tainted its discretionary decision to allow the jury to hear the witness's testimony. *People v Green*, 205 Mich App 342, 346; 517 NW2d 782 (1994). Because the prosecutor's entire case rested on the highly questionable factual recitation of this witness, we must reverse. In light of our disposition, we do not reach defendant's other challenges on appeal.

Reversed and remanded for further proceedings not inconsistent with this opinion. We do not retain jurisdiction.

/s/ Mark J. Cavanagh  
/s/ Kathleen Jansen  
/s/ Peter D. O'Connell